IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.284 OF 2007

Shri Kadirbhai Abdul Rehman Khan
since deceased through his legal
heirs
Shri Rashidkhan Kadirkhan & Ors. ...Applicants

Versus

Shri Somwanshiya Sahasrarjun
Kshatriya Samaj Trust & Ors. ...Respondents

Shri G.S.Godbole for the Applicants.

Shri Jaydeep S. Deo for the Respondent Nos.3 to 10 and 12.

CORAM : ABHAY S.OKA, J.
DATED : JUNE 29, 2007.

P.C.:

1. I have heard the submissions of the learned counsel appearing for the parties. The revision Applicants have challenged the decree for possession passed by the Small Causes Court on the ground of bonafide and reasonable requirement for erection of a new building and the confirmation of the said decree by the District Court.

2. The suit property is an open land admeasuring 60ft X 60ft which is more particularly described in the suit filed by the Respondents. The Respondents are the trustees of a Public Charitable Trust duly registered under the Bombay Public Trusts Act, 1950. The revision

Applicants are the tenants in respect of the said open land admeasuring 60ft X 60ft at monthly rent of Rs.120/-. The case made out by the Respondents is that the suit property was let out to the revision Applicants for the purposes of a garage. It is alleged that the revision Applications have changed the user of the suit property. It is alleged that the suit property is required for construction of a building. The suit for eviction was filed by the Applicants on various grounds such as arrears of rent, causing nuisance and annoyance, change of user as well as a bonafide and reasonable requirement for erection of a new building. The trial Court negatived all the grounds save and except the ground of bonafide requirement under section 13(1)(i) of the Bombay Rents, Hotel and Lodging Houses Rates (Control) Act, 1947. The Appellate Court has confirmed the decree. The trial Court held that the requirement of the Trust of constructing a new building was established. The trial Court referred to evidence of the Manager of a Bank who deposed that the bank was ready to provide loan to the Respondents for the construction of a new building. The trial Court referred to the evidence of an architect who deposed that he had prepared the building plan of the proposed building and has submitted the same to the Municipal Corporation for sanction. The courts below have

observed that since the decree was sought under section 13(1)(i) of the said Act of 1947, it is not necessary to decide the issue of comparative hardship.

3. The learned counsel for the revision Applicants pointed out the fact that the requirement pleaded by the Respondents is not that the Trust wants to construct a building for its own use. He pointed out that the requirement pleaded is of construction of a building for the purposes of letting out or transferring the tenements in the buildings to third parties and to earn profit. He submitted that such requirement cannot be sufficient to pass a decree. In any event, he submitted that the constructed tenements can be let out to the revision Applicants by the Respondents and the revision Applicants are ready and willing to pay necessary consideration to the Respondents. He submitted that as of today even the building plan has not been sanctioned.

4. I have considered the submissions. The Respondents have pleaded in the plaint that the Trust needs an office premises and a hall. It is stated that the Trust has undertaken various welfare activities. It is stated that the Trust was having sufficient funds and the members were also willing to collect sufficient amount. It is stated that it is possible for the Trust

to raise necessary amount from the financial institutions.

5. One Shri Sandeep Chavan examined on behalf of the Trust stated about the financial condition of the Trust. He stated that the Trust was desirous of constructing a building providing for office, halls etc. He stated that the Trust needs a premises for establishing a hostel for the students. He has deposed that even the Charity Commissioner has permitted the Trust to construct a building. He stated that suits have been filed against the other tenants occupying the premises in the property of the Trust. The architect examined by the Respondents has stated that even the building plan has been submitted for sanction of the Municipal Corporation.

6. The Respondent-Trust wants to construct a building for its own activities. The Respondent-Trust may earn sufficient funds by even letting out the tenaments in the building to the third parties. It is very difficult to disturb a finding of fact recorded by the Appellate Court on the issue of bonafide requirement of the Public Charitable Trust.

7. In so far as the offer given by the

Respondent-Applicants to acquire a premises in proposed building is concerned, the learned Advocate for the Respondents on instructions states that the Respondents are unable to accept the said offer. The legal position is very clear that while passing a decree under section 13(1)(i), it is not necessary for the Court to decide the issue of comparative hardship.

8. There is no merit in the revision Application and the same deserves to be dismissed. It must be noted here that till today the Municipal Corporation has not granted building permission and has not issued commencement certificate. It is stated that the Respondents will be able to obtain commencement certificate within a short time. Till the time the Respondents do not intend to carry out construction, the Applicants can be allowed to retain the suit property. The Applicants will have to vacate the suit property on receiving an intimation from the Respondents regarding the approval of the plans and grant of commencement certificate. The learned counsel for the revision Applicant states that decree for possession may be stayed to enable the Applicant to approach the higher Court.

9. Hence, I pass the following order:

(i) The Revision Application is dismissed with no order as to costs.

(ii) Notwithstanding the dismissal of the Revision Application, it will be open for the Applicants to occupy the suit property subject to payment of compensation equivalent to monthly rent till the date on which they receive a written intimation from the Respondents regarding grant of building permission and commencement certificate and of their intention to commence the work of construction. The Applicants will have to vacate the suit property immediately on receipt of the intimation.

(iii) As the Applicants desire to challenge this order, it is made clear that even if such intimation is received by the Applicants within a period of three months from today, for a period of three months from today, the decree for possession shall not be executed.

(iv) The revision Applicants are restrained from creating any third party interests in respect of the suit property and from parting with

possession of the suit property.

JUDGE